

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

CASE NO. 3:04-CV-146-99HTS

SEA STAR LINE, LLC,
a limited liability company,

Plaintiff,

-vs-

EMERALD EQUIPMENT LEASING, INC.,
a corporation,

Defendant.

_____ /

RESPONSE TO NOTICE TO THE COURT PURSUANT TO LOCAL RULE 3.01(h)

In response to the Notice filed by Defendant, EMERALD EQUIPMENT LEASING, INC. ("EMERALD") [Doc. No. 30], Plaintiff, SEA STAR LINE, LLC ("SEA STAR") agrees that a ruling on EMERALD's Motion to Dismiss Complaint for Declaratory Judgment and for Damages or Alternatively to Transfer Venue or Stay would be beneficial. However, in light of the claims stated in SEA STAR's Complaint, a ruling on EMERALD's Motion to Dismiss would not be dispositive. The Notice also is improper to the extent EMERALD attempts to delineate procedural facts and to summarize arguments.

EMERALD's Notice omits mention of the Order issued by the United States Bankruptcy Court for the District of Delaware after service of its Motion to Dismiss *sub judice*. A copy of the Order

dated May 28, 2004 is on file in this case. Doc. No. 14. Furthermore, EMERALD's assertions in paragraph 6 and in footnote 1 of the Notice not only are improper but also inaccurate. Referring to the bankruptcy court hearing transcript attached to SEA STAR's Response to Defendant's Motion for Protective Order Regarding Notice Rule 30(b)(6) Deposition of Defendant and All Depositions in this Case Pending Disposition of Dismissal Motion [Doc. No. 24], the Magistrate Judge observed: "Additionally, it is far from clear that the [Emerald] Motion to Dismiss will be granted." Order 2 (Oct. 29, 2004) (Doc. No. 26).

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing Response to Notice to the Court pursuant to Local Rule 3.01(h) was mailed this 6th day of December, 2004 to **GARY M. SCHILDHORN, ESQ. and ALAN I. MOLDOFF, ESQ.**, Adelman Lavine Gold and Levin, Suite 900, Four Penn Center, Philadelphia, PA 19103-2808 and a copy to **MICHAEL L. GORE, ESQ.**, Shutts & Bowen LLP, P.O. Box 4956, Orlando, FL 32802-4956.

S/ Timothy J. Armstrong

TIMOTHY J. ARMSTRONG
 Fla. Bar. No 135859
 Armstrong & Mejer, P.A.
 Douglas Centre, Suite 1111
 2600 Douglas Road
 Coral Gables, FL 33134
 Telephone 305-444-3355
 Telefax 305-442-4300
 E-mail amesq@aol.com

liz\04pldgs\03-3621-030